

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Treasurer**

*Corporations Act 2001*  
*Bankruptcy Act 1966*

*Corporations and Bankruptcy Legislation Amendment (Extending Temporary Relief for Financially Distressed Businesses and Individuals) Regulations 2020*

Section 1364 of the *Corporations Act 2001* and section 315 of the *Bankruptcy Act 1966* (the Acts) provide that the Governor-General may make regulations prescribing matters required or permitted by the respective Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

The purpose of the *Corporations and Bankruptcy Legislation Amendment (Extending Temporary Relief for Financially Distressed Businesses and Individuals) Regulations 2020* (the Regulations) is to extend measures expressed in Schedule 12 to the *Coronavirus Economic Response Package Omnibus Act 2020* beyond their initial six month application period so that they apply until the end of 31 December 2020.

As a result of the ongoing economic impacts of the Coronavirus, a significant number of Australian companies and individuals will continue to experience financial distress and be at risk of insolvency.

The amendments made by the Regulations continue to provide businesses and individuals with a safety net by lessening the threat of actions that could unnecessarily push them into external administration or bankruptcy. The amendments do this by helping businesses continue to operate during a temporary period of illiquidity, rather than entering voluntary administration or liquidation, and assisting individuals to manage debt and avoid bankruptcy.

This will enable more businesses and individuals to continue trading productively, provide ongoing employment and resume normal business operations once the crisis has passed.

Public consultation did not occur given the need to respond to urgent and unforeseen events.

Details of the Regulations are set out in [Attachment A](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on the day after it was registered.

The Regulations have a negligible impact on compliance costs.

A statement of Compatibility with Human Rights is at [Attachment B](#).

**Details of the Corporations and Bankruptcy Legislation Amendment (Extending Temporary Relief for Financially Distressed Businesses and Individuals) Regulations 2020**

**Section 1 – Name of the Regulations**

Section 1 provides that the name of the Regulations is the *Corporations and Bankruptcy Legislation Amendment (Extending Temporary Relief for Financially Distressed Businesses and Individuals) Regulations 2020* (the Regulations).

**Section 2 – Commencement**

Section 2 provides that Schedule 1 to the Regulations commences on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

Section 3 states that the Regulations are made under the *Corporations Act 2001* and the *Bankruptcy Act 1966*.

**Section 4 – Schedule**

Section 4 provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Item 1**

Regulation 4.02AA of the *Bankruptcy Regulations 1996* prescribes a temporary increase to the definition of *statutory minimum* and *statutory period* in the *Bankruptcy Act 1966*.

The statutory minimum is the minimum amount of debt required to be owed before a creditor can initiate involuntary bankruptcy proceedings against a debtor. The statutory period is the timeframe in which a debtor must comply with a bankruptcy notice.

The temporarily increased statutory minimum and statutory period are \$20,000 and six months, respectively. Given the temporary nature of these increases, subregulation 4.02AA(3) provided that regulation 4.02AA was to be repealed six months after the day on which it commenced. Accordingly, the regulation was scheduled to be repealed immediately before 25 September 2020.

The amendment made by Item 1 provides that regulation 4.02AA is now repealed at the end of 31 December 2020.

## **Item 2**

Regulation 4.10A of the *Bankruptcy Regulations 1996* prescribes a temporary increase to the definition of *default period* in the *Bankruptcy Act 1996*.

The default period is the timeframe in which a debtor is protected from enforcement action by a creditor following presentation of a declaration of intention to present a debtor's petition.

The temporarily increased default period is six months. Given the temporary nature of this increase, subregulation 4.10A(2) provided that regulation 4.10A was to be repealed six months after the day on which it commenced. Accordingly, the regulation was scheduled to be repealed immediately before 25 September 2020.

The amendment made by item 2 provides that regulation 4.10A is now repealed at the end of 31 December 2020.

## **Item 3**

Regulation 5.4.01AA of the *Corporations Regulations 2001* prescribes a temporary increase to the definition of *statutory minimum* and *statutory period* in the *Corporations Act 2001*.

The statutory minimum is the minimum amount of debt required to be owed before a creditor can issue a statutory demand on a company. The statutory period is the default period in which a company must comply with a statutory demand.

The temporarily increased statutory minimum and statutory period are \$20,000 and six months, respectively. Given the temporary nature of these increases, subregulation 5.4.01AA(3) provided that regulation 5.4.01AA was to be repealed six months after the day on which it commenced. Accordingly, the regulation was scheduled to be repealed immediately before 25 September 2020.

The amendment provided by Item 3 provides that the regulation is now repealed at the end of 31 December 2020.

## **Item 4**

Item 4 inserts Part 5.7B and regulation 5.7B.01 into the *Corporations Regulations 2001*. Regulation 5.7B.01 prescribes a longer period for the purposes of subparagraph 588GAAA(1)(b)(ii) of the *Corporations Act 2001*.

Section 588GAAA of the *Corporations Act 2001* provides a safe harbour from the director's duty to prevent insolvent trading. A director may rely on the temporary safe harbour in relation to a debt incurred by the company if, among other things, the debt is incurred during the six month period starting on the day the new law commenced, or a longer period as prescribed by the regulations. Given a longer period was not prescribed by the regulations, the six month period was due to cease immediately before 25 September 2020.

The amendments made by Item 4 provide that the temporary safe harbour now applies until the end of 31 December 2020.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Corporations and Bankruptcy Legislation Amendment (Extending Temporary Relief for Financially Distressed Businesses and Individuals)***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The purpose of the *Corporations and Bankruptcy Legislation Amendment (Extending Temporary Relief for Financially Distressed Businesses and Individuals) Regulations 2020* (the Regulations) is to extend measures expressed in Schedule 12 to the *Coronavirus Economic Response Package Omnibus Act 2020* beyond their six month application period so that they apply until the end of 31 December 2020.

As a result of the ongoing economic impacts of the Coronavirus, a significant number of Australian companies and individuals will continue to experience financial distress and be at risk of insolvency.

The amendments made by the Regulations continue to provide businesses and individuals with a safety net by lessening the threat of actions that could unnecessarily push them into external administration or bankruptcy. This will enable more businesses and individuals to continue trading productively, provide ongoing employment and resume normal business operations once the crisis has passed.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.